

E-FILED on 2/21/06

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MONTEREY REGIONAL WATER  
POLLUTION CONTROL AGENCY, a Joint  
Powers Agency,

Plaintiff,

v.

CH2M HILL, INC; CH2M HILL  
COMPANIES, LTD.; and DOES 1 through 20,

Defendants.

No. C-05-04850 RMW

ORDER GRANTING MOTION TO DISMISS  
PLAINTIFF'S THIRD CAUSE OF ACTION  
FOR BREACH OF IMPLIED WARRANTY

[Re Docket Nos. 12, 15, 16]

Defendants CH2M Hill, Inc. and CH2M Hill Companies, Ltd. move under Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiff Monterey Regional Water Pollution Control Agency's third cause of action, for breach of an implied warranty. For the reasons set forth below, the court grants defendants' motion.

**I. BACKGROUND**

The following facts are taken from the complaint, which the court generally must accept as true on a motion to dismiss: Plaintiff Monterey Regional Water Pollution Control Agency ("MRWPCA") hired CH2M Hill California Inc. for assistance in the construction of a wastewater

1 treatment plant. CH2M Hill California specified copper pipe for a part of the plant. The pipe  
2 ruptured, causing damage to the plant and necessitating repairs and replacement of the copper pipe.

3 MRWPCA sued CH2M Hill, Inc. and CH2M Hill Companies, Ltd. (collectively "CH2M") as  
4 CH2M Hill California's successors in interest to the contract with MRWPCA. The complaint  
5 contained three causes of action: negligence, breach of contract, and breach of implied warranty.  
6 CH2M moves to dismiss the claim for breach of implied warranty.

## 7 II. ANALYSIS

8 The contract specifies that is is governed by California law, and neither party challenges the  
9 application of California law. The dispute is whether, under California law, the plaintiff may  
10 maintain a cause of action against the defendants for breach of an implied warranty for the  
11 defendants' design work. "[T]he well settled rule in California is that where the primary objective of  
12 a transaction is to obtain services, the doctrines of implied warranty and strict liability do not apply."  
13 *Allied Props. v. John A. Blume & Assocs., Eng'rs*, 25 Cal. App. 3d 848, 855 (1972).

14 Plaintiff claims that "CH2M sold it a wastewater treatment plant." Opp'n at 2. However, this  
15 claim is belied by the parties' contract, which is attached to the complaint as Exhibit A. Plaintiff  
16 claims that its assertions that CH2M was involved in "building" and the "development" of the plant  
17 are sufficient to prevent dismissal of its claim for breach of implied warranty because it has alleged  
18 that CH2M sold it a plant. The court need not decide if, absent consideration of the contract,  
19 plaintiff has sufficiently stated a cause of action for breach of implied warranty against CH2M.  
20 While a court ordinarily must, on a motion to dismiss, accept the allegations of the complaint as  
21 true, a court may properly consider a contract attached to a complaint and disregard allegations in  
22 the complaint contradicted by the contract. *Spreewell v. Golden State Warriors*, 266 F.3d 979, 988  
23 (9th Cir. 2001).

24 The parties' contract makes it clear that CH2M provided only services, not property, to  
25 plaintiff. According to the contract, CH2M "is employed to render a professional service only."  
26 Compl., Ex. A, § XII. Representative responsibilities contractually assigned to CH2M are document  
27 review, assisting plaintiff in obtaining permits, designing the facility, writing operating manuals, and  
28 analyzing bids. *Id.* § IV(B)-(D). The primary objective of the parties' contract is to obtain services,

1 thus the doctrine of implied warranty is inapplicable. *Allied Props.*, 25 Cal. App. 3d. at 855.  
2 Plaintiffs' cause of action for breach of implied warranty thus must be dismissed.

3 Plaintiff may attempt to amend its complaint to state a viable claim for breach of implied  
4 warranty. *See* Fed.R.Civ.P. 15(a). To do so, plaintiff must set forth facts that show CH2M was  
5 engaged in building or that additional contracts covered building by CH2M.

6 **III. ORDER**

7 For the foregoing reasons, plaintiff's cause of action for breach of implied warranty is  
8 dismissed.

9  
10  
11 DATED: 2/17/06

/s/ Ronald M. Whyte  
RONALD M. WHYTE  
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiffs:**

3 Thomas R. Hogan                      trh@hoganlaw.com  
4 Mark Vincent Boennighausen      mvb@hoganlaw.com

5 **Counsel for Defendants:**

6 Christopher John Hersey              chersey@millermorton.com  
7 Peter V. Dessau

8 Counsel are responsible for distributing copies of this document to co-counsel that have not  
9 registered for e-filing under the court's CM/ECF program.

10  
11 **Dated:**      2/21/06                      /s/ JH  
12 **Chambers of Judge Whyte**